415 Phil. 447

FIRST DIVISION

[G.R. No. 139420, August 15, 2001]

ROBERTO R. SERRANO, PETITIONER, VS. COURT OF APPEALS, NATIONAL LABOR RELATIONS COMMISSION, MAERSK-FILIPINAS CREWING, INC. AND A.P. MOLLER, RESPONDENTS.

D E C I S I O N

PUNO, J.:

Were it not for petitioner's relentless efforts, his claim for portions of his salary as a seaman would now be sunk into oblivion. The ebb and flow of his claim will now rest as he is finally awarded what has long been due him.

This is a petition for review on certiorari to nullify the resolutions of the Court of Appeals dated June 18, 1999 and July 15, 1999 dismissing outrightly the petition for certiorari filed by petitioner for having been filed out of time.

The following facts spurred the present controversy:

From 1974 to 1991, respondent Maersk-Filipinas Crewing, Inc., the local agent of respondent foreign corporation A.P. Moller, deployed petitioner Serrano as a seaman to Liberian, British and Danish ships.[1] As petitioner was on board a ship most of the time, respondent Maersk offered to send portions of petitioner's salary to his family in the Philippines. The amounts would be sent by money order. Petitioner agreed and from 1977 to 1978, he instructed respondent Maersk to send money orders to his family. Respondent Maersk deducted the amounts of these money orders totaling HK$4,600.00 and £1,050.00 Sterling Pounds from petitioner's salary.[2] Respondent Maersk, it is also alleged, deducted various amounts from his salary for Danish Social Security System (SSS), welfare contributions, ship club, and SSS Medicare.

It appears that petitioner's family failed to receive the money orders petitioner sent through respondent Maersk.[3] Upon learning this in 1978, petitioner demanded that respondent Maersk pay him the amounts the latter deducted from his salary. Respondent Maersk assured him that they would look into the matter, then assigned him again to board one of their vessels.

Whenever he returned to the Philippines, petitioner would go to the office of respondent Maersk to follow up his money claims but he would be told to return after several weeks as respondent Maersk needed time to verify its records and to bring up the matter with its principal employer, respondent A.P. Moller. Meantime, respondent Maersk would hire him again to board another one of their vessels for about a year.

Finally, in October 1993, petitioner wrote to respondent Maersk demanding

immediate payment to him of the total amount of the money orders deducted from his salary from 1977 to 1978.[4] On November 11, 1993, respondent A.P. Moller replied to petitioner that they keep accounting documents only for a certain number of years, thus data on his money claims from 1977 to 1978 were no longer available. Likewise, it was claimed that it had no outstanding money orders. A.P. Moller declined petitioner's demand for payment.[5]

In April 1994, petitioner filed a complaint for collection of the total amount of the unsent money orders and illegal salary deductions against the respondent Maersk in the Philippine Overseas Employment Agency (POEA). The case was transferred to the NLRC where Labor Arbiter Arthur Amansec ruled, viz:

> "Anent the deductions from his salary of "Welfare/Ship Club" contributions, these deductions are compulsory deductions pursuant to Department Order No. 898 dated December 27, 1990 of the Danish Maritime Authority. Being government imposed deductions, the same cannot be said to be unlawful. In fact, a non-deduction could have been unlawful and could have meant official sanctions against the respondents.
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> Regarding the Danish SSS deductions of forty-four dollars ($44.00) for a period of three (3) months in 1991, it appearing that the same were for payments of complainants' medical insurance and expenses, the same cannot be said to be illegal.
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> Regarding to (sic) complainant's claim for payment of and/or refund of seven (7) money orders for the period covering 1977 to 1978, while the respondents claim payment of that claim, it failed to present competent evidence of payment such that this Office is constrained to approve this claim as warranted.
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> **WHEREFORE**, judgment is hereby made ordering the respondent and/or TICO Insurance Co., Inc. to refund to complainant his untransmitted money order payment of HK$4,600 and 1,050 Sterling Pounds.
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> Respondent TICO Insurance Co., Inc.('s) cross-claim against respondent, for being meritorious, is hereby **APPROVED**.
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> Other claims for lack of merit, are ordered **DISMISSED**."[6]

Respondent Maersk appealed to the NLRC the Labor Arbiter's grant of the claim for the amount of unsent money orders. The NLRC reversed and set side Labor Arbiter Amansec's decision and dismissed the case on the ground of prescription, viz:

> "The Appeal is impressed with merit. Primarily we find that the complainant's claim that the money orders he sent to his brother Arturo Serrano in the years 1977 to 1978 were not received by the latter and his claim against respondent to pay him the alleged amounts of

HK$4,600 and 1,050 (Position Paper) or US$2,050.00 (Affidavit-complaint) has indeed prescribed. Under Article 251 (sic) of the Labor Code as amended and we quote:

> 'Article 291. Money claims. All money claims arising from employer-employee relations accruing during the effectivity of this Code shall be filed within three years from the time the cause of action accrued, otherwise they shall be forever barred.'

In the instant case, complainant's cause of action accrued in 1977 and 1978 but he filed a complaint only on April 20, 1994. Clearly, complainant has slept on his rights and allowed himself to be overtaken by prescription."

On March 4, 1999, petitioner filed a motion for reconsideration of the NLRC decision. It was denied for lack of merit.

Petitioner sought recourse in the Court of Appeals. The appellate court dismissed his petition for having been filed out of time. Petitioner's motion for reconsideration of the appellate court's resolution having been denied, he appealed to this Court with the lone assignment of error, viz:

> "RESPONDENT COURT OF APPEALS ERRED IN DISMISSING THE PETITION ON MERE TECHNICALITIES RATHER THAN ON THE MERITS OF THE CASE."

The Labor Arbiter's dismissal of petitioner's complaint for illegal salary deductions was not appealed and has thus become final. In his petition before this Court, petitioner takes issue only on the dismissal of his claim for the unsent money orders.

We shall first deal with the issue on the period for filing a petition for review from a decision of the NLRC to the Court of Appeals.

Applying the law then applicable, the Court of Appeals correctly dismissed the petition for certiorari for having been filed out of time, *viz*:

> ". . . Pursuant to Section 4 of the Rule, as amended effective September 1, 1998, such a petition should be filed within sixty days, computed as follows:
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> > 'SEC. 4. *Where and when petition to be filed*. - The petition may be filed not later than sixty (60) days from notice of judgment, order or resolution sought to be assailed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the

Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its jurisdiction. If it involves acts or omissions of a quasi-judicial agency, and unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals.

'If petitioner had filed a motion for new trial or reconsideration in due time after notice of said judgment, order or resolution, the period herein fixed shall be interrupted. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of such denial. No extension of time to file the petition shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.'

In the instant petition, the petitioner himself states that on **February 26, 1999**, he received a copy of the impugned decision of the National Labor Relations Commission; and on **March 4, 1999**, he filed his motion for reconsideration. Thus, he had already used up six (6) days of the reglementary 60-day period so that he had only fifty-four (54) days from notice of the denial of his motion for reconsideration within which to file his petition. On **April 6, 1999**, he received a copy of the Resolution of the NLRC denying his motion for reconsideration. Accordingly, he had only until **May 30, 1999**, within which to file his petition. But he filed it only on **June 7, 1999**. Hence, it is late by eight (8) days."[7] (emphasis supplied)

Be that as it may, Rule 65, Section 4, as amended, was further amended effective September 1, 2000 to read as follows:

"Sec. 4. *When and where petition filed*.-- The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. **In case a motion for reconsideration or new trial was timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.**

The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, unless otherwise